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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 375 OF 2002**

Anwar Imamsab Rangrej ... Appellant

V/s.

1. The State of Maharashtra
2. Jalil Gularm Husain Qureshi ... Respondents

Mr. I.A. Khairadi for the Appellant.

Dr. F.R. Shaikh for the Respondents.

**CORAM: V.G. PALSHIKAR &**
**SMT.NISHITA MHATRE, JJ.**

**DATED: OCTOBER 18 , 2006**

**ORAL JUDGMENT (PER PALSHIKAR, J.):**

. Being aggrieved by the order dated 7th March, 2002 passed by the IV Additional Sessions Judge, Solapur, in Sessions Case No. 153 of 2001, the appellant - original accused No.1 has filed this appeal challenging his conviction and sentence under Sec. 302 of th Indian penal Code as also Section 25 of the Arms Act, 1959.

2. With the assistance of the learned counsel for the accused-appellant and the learned Additional Public Prosecutor we have scrutinized the record and re-appreciated the evidence on record.

3. The prosecution case, stated briefly, is that -

The victim Raisa was wife of the complainant Jalil who was doing the work of collecting old and waste material and victim Raisa was small scale cloth seller. She had sold some cloth to the accused persons and they owed her the price thereof. According to the prosecution, on 18.2.2001 at around 8.30 p.m. victim Raisa told her husband that she is going to the house of the accused to collect certain outstandings. She left her house around 9.00 p.m. and complainant Jalil left around 10 minutes thereafter to the Nadaf Hotel to take tea. When he was on his way to the hotel, he saw his wife crying and holding her belly. He saw bleeding injuries and saw that the intestines of the victim were out. He asked the victim as to how the injuries were caused and the victim told him that these injuries were caused by the accused persons. After saying this, according to the complainant, she died on the spot. Complaint was lodged by the complainant PW1 husband of the victim before the police and investigation was conducted. The accused persons were arrested and they were charged under Section 302 for committing murder of Raisa. The prosecution examined 13 witnesses to prove its case and

the learned trial Judge, on appreciation of evidence on record, came to the conclusion that the accused is guilty of offence under Section 302 of the Indian Penal Code and, therefore, the conviction as mentioned above. It is this order which is assailed before us by the learned counsel appearing for the accused. We took us to the evidence of PW1 the complainant, PW2 a child witness who claims to be the eye-witness and PW3 a relative of complainant PW-1 Jalil. The prosecution has proved that the death of victim Raisa was homicidal in nature. It is thus believing the testimony of PW2 and the corroborative narration of PW1 and PW3, the learned trial Judge convicted the accused No.1 as mentioned above. As there was no material against accused Nos. 2 and 3 they were acquitted.

4. The panch witness in whose presence the recovery of knife at the instance of the accuse was made, has turned hostile and, therefore, reliance has been placed on the report of the investigating officer that the recovery has been made alleging in presence and at the instance of the accused. The recovery is made from open place and the PW3 claims that he saw the accused No.1 running away with knife in hand. The attempt of the prosecution seems to be to connect all the circumstances and provide wherever necessary the missing links by such evidence.

5. The appreciation of the testimony of PW-1 complainant, PW2 the alleged eye-witness and PW3 the relative who came at the site immediately after the assault took place. PW1 Jalil is the complainant who says that accused owes some money to the victim and to collect that money, the victim went to the accused. He does not say in his examination-in-chief that the victim was accompanied by her daughter PW2. He does not say that when the victim came home with the stab injuries, abdomen hanging out, pressing somehow by hand and crying. She was accompanied by the daughter PW2 and or at least PW2 was with the victim when she was coming to her home after the assault. There is no evidence on record therefore to show that PW2 a child of 9-10 years was accompanying the mother at the time when she went for recovery of the money. Certain intrinsic piece of evidence are required to be taken note of if the testimony of PW2 has some credence. PW2 has said that when the mother went to recover the money, she and her brother were watching the movie on the television titled "Shahenshah". If these children were watching the movie, it is unlikely that one of them was accompanying the mother for recovery of money, which is a routine job. It appears to us that the child is made a witness to provide very important link for an eye-witness.

6. PW1 complainant Jalil then tells the Court that having seen his wife so assaulted, he lifted her, put her on platform, then again lifted her to in rikshaw and went to the house of his sister-in-law (sister of Raisa). All three witnesses PW-1, PW-2 and PW-3 have unequivocally stated in the Court that after telling of the assault to PW1, Raisa died. This aspect is stated by both PW1 and PW3. There is no reason nor is there any explanation on the part of the prosecution as to why in such circumstances PW1 the husband took the help of unknown lady and carried them to the house of Raisa's sister. The witness admits that Raisa had suffered many stab injuries and they were bleeding, while he told the Court that his clothes were never soiled with blood. Such clothes are neither produced nor seized by the police. The witness does not know the name of the lady who accompanied the victim and the witness to the house of Raisa's sister. If there is even a semblance of truth in this claim of the witness, the prosecution has miserably failed to prove anything in the matter by not examining such a vital witness as with unknown lady.

7. PW1 complainant Jalil then claims that he immediately informed the police and he took the wife to the hospital where she was declared dead on admission.

It is in his admission that one unknown lady accompanied him while taking the injured Raisa to her sister's place. The person helping him during all this journey is not known to him nor is produced by the prosecution.

8. On the top of this, reliance was placed on the evidence of PW2 a child of 9-10 years old. Why did a child of 9-10 years watching the movie accompanied her mother who was going to routine job for recovery of money dues. If she has factually gone, it is impossible for us to believe that a person seeing his wife bleeding and shouting accompanied by the child would not notice the child and take first care of the child while taking care of the wife. He does not mention anywhere that the PW2 was near around.

9. PW3 was examined who comes on the scene of offence and who is brother of PW1 complainant Jalil. While so going to the house of Jalil, he witnessed the incident that the victim is injured. He heard the injured victim that she was assaulted by accused persons and then she died. The question which arose in such circumstances is, when did victim died ? Whether she died as alleged by PW1 immediately on disclosure of the task or on disclosure by PW2 after narration to the child and the

husband or as claimed by PW3 after his arrival and narration to him by the victim. The entire attempt, it seems, is somehow endorse the accused of the crime which he may not have committed. According to the Station House Officer of Sadar Bazar Police Station, he got a message telephonically that murder has taken place in Shastri Nagar area, Solhapur. The Station House Officer of Sadar Bazar cannot direct the P.S.I. of Shastri Nagar to proceed for enquiry. It is then revealed to this P.S.I. Nasir U. Shaikh and according to this witness, when he reached on the site there was a mob of about 60-70 persons. When he made enquiry, he was told that Raisa - wife of Jalil was murdered and he then started to record the statement and also recorded the complaint of Jalil at 10.15 p.m. at the site. If this is so, PW1 is lying even when he say that he went to the police station. With such a state of evidence, according to us, the prosecution has miserably failed to prove any connection between the homicidal death of Raisa and the accused persons. PW1 and PW3 are not eye-witnesses. According to the child witness PW2, she narrated the incident to her father and the victim immediately who died on the spot after telling the husband that Anwar, Tabbu and Fatima had beaten her. According to this witness, thereafter Kayyum uncle came and took care of them. According to her, therefore,

death occurred prior to coming of Kayyum uncle on the site. However, we have PW3 telling us that he went to the place and saw the victim and her husband asking the victim how she was assaulted. She told him that she was assaulted by the accused and then she died. If this is true, it is impossible to believe that PW1 would not remember it. In such a set of evidence, according to us, it cannot be said with certainty that it was the accused who was responsible for the victim's death.

10. The accused is the person who is already convicted. Accused Nos. 2 and 3 have already been acquitted. Accused No.1 is convicted on the basis of such evidence and recovery of the knife from a open place. The panch witness has turned hostile. In our opinion, the prosecution has failed to prove any connection between the accused and the death of Raisa. The learned trial Judge erred in appreciating the evidence in the manner he has done. The conviction is untenable.

11. The appeal is allowed. The judgment and order of the trial Court convicting the accused is set aside. The accused is in jail. He be set at liberty forthwith, if not otherwise required in law.